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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

DAVID HECHT, individually and on behalf of
others similarly situated,

Plaintiff,

vs.

THE HERTZ CORPORATION,

Defendant.

Civil Action Number:

CLASS ACTION

CLASS ACTION COMPLAINT

JURY DEMAND

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Plaintiff David Hecht, residing at 51 Hickory Lane, Closter, New Jersey, on behalf of himself and all others similarly situated (hereinafter "Plaintiff"), by and through his attorneys, Cohn Lifland Pearlman Herrmann & Knopf LLP ("Proposed Class Counsel"), allege against The Hertz Corporation ("Hertz" or "Defendant") the following:

PRELIMINARY STATEMENT

1. Plaintiff brings this class action on behalf of himself and putative classes of New Jersey citizens (as defined herein, the "Classes") against Defendant. Plaintiff alleges that several provisions found on Hertz' consumer website – specifically, the terms and conditions governing the use of the website generally and the terms and conditions governing the enrollment and participation in Defendant's Gold Plus Rewards Program - violate the New Jersey Truth-in-Consumer Contract, Warranty and Notice Act, N.J.S.A. 56:12-14 to 18 ("TCCWNA"). Plaintiff alleges specifically that these terms and conditions violate TCCWNA by stating that certain provisions are or may be void, unenforceable or inapplicable in some jurisdictions without specifying which provisions are or are not void, unenforceable or inapplicable within the State of New Jersey. Plaintiff seeks TCCWNA's mandatory minimum \$100 statutory penalty, plus reasonable attorneys' fees and court costs, for himself and each similarly situated member of the Classes in connection with each violation of TCCWNA.

PARTIES

2. Plaintiff David Hecht is a natural person who at all times relevant to the allegations in this matter resided in Bergen County, New Jersey. Plaintiff is a member of the Hertz' Gold Plus Rewards Program who, during the past six years, has used Hertz' website to rent motor vehicles from Hertz for personal, family or household purposes.

3. For example, on June 25, 2015, after reserving a rental on Hertz' website while in the State of New Jersey, Plaintiff rented a car from Hertz. Again, on November 11, 2015, after

reserving a rental on Hertz' website while in the State of New Jersey, Plaintiff rented a car from Hertz. Both of those rentals were for personal, family or household purposes.

4. Defendant Hertz is a corporation incorporated in the State of Delaware with its principal place of business located in Florida. Hertz is registered to do business in New Jersey. It is in the business of renting cars and other motor vehicles from approximately 10,090 corporate and franchise locations in approximately 145 countries.

5. Hertz maintains a website, www.hertz.com, on which it allows customers to reserve motor vehicles for rentals and, in some instances, prepay for those rentals.

6. Hertz conducts a program, called the Hertz Gold Plus Rewards program, that allows participants to bypass the rental counter entirely and proceed directly to their vehicles upon arrival at a Hertz facility.¹ Members of this program "are also eligible to earn Gold Plus Rewards points that may be redeemed for free rental days or converted to awards of other companies' loyalty programs."² Hertz states that "the Hertz Gold Plus Rewards program provides a significant competitive advantage to us, particularly among frequent travelers, and we have targeted such travelers for participation in the program."³

JURISDICTION AND VENUE

7. This Court has jurisdiction over this class action pursuant to the Class Action Fairness Act, 28 U.S.C. §§ 1332(d)(2). The amount in controversy exceeds \$5 million, exclusive of interest or costs; the proposed class includes at least 100 members, and there is minimal diversity of citizenship. The members of the Class are citizens of New Jersey. Hertz is a citizen of Delaware and Florida.

¹ Hertz 2015 Sec Form 10-K at 6.

² Hertz 2015 Sec Form 10-K at 6.

³ Hertz 2015 Sec Form 10-K at 6.

8. This Court has jurisdiction over Hertz because it is a corporation that regularly conducts business in this state with places of business in more than 50 New Jersey cities, and otherwise has sufficient minimum contacts with New Jersey to justify the exercise of jurisdiction.

9. Venue is proper in this district pursuant to 28 U.S.C. § 1391.

FACTUAL ALLEGATIONS AS TO THE CLASS

Terms and Conditions for Use of Hertz Website

10. Hertz allows consumers to use its website, www.hertz.com, to make reservations for rental of cars and other motor vehicles.

11. On a web page entitled, “THE HERTZ CORPORATION WEBSITE GENERAL TERMS AND CONDITIONS OF USE,” (“Hertz’ General Terms of Use”) Hertz provides notice to consumers of terms and conditions to which they must agree in order to use Hertz’ website and states that the terms and conditions constitute an “Agreement”: “We offer this website, subject to the following terms and conditions (“Agreement”). Please read this Agreement carefully before using this website. By using this website, you accept the terms and conditions set forth in this Agreement.”⁴

12. Hertz’ General Terms of Use contains a New Jersey choice of law provision: “Except to the extent expressly provided in the following paragraph, this Agreement (including any of our policies referred to herein) shall be governed by and construed in accordance with the laws of the State of New Jersey in the United States without regard to New Jersey’s conflict of law provisions.”

13. Hertz’ General Terms of Use also contains a forum selection clause providing for venue in New Jersey federal or state court: “If you are a citizen or resident of the United States, a

⁴ <https://www.hertz.com/rentacar/navigation/templates/legalView.jsp> (accessed Mar. 15, 2016).

U.S. commonwealth or a U.S. territory, or if you are accessing this website from the United States, you hereby agree that any disputes arising under or in connection with this Agreement, this website, and/or the Site Materials shall be submitted for resolution to either the U.S. District Court for the District of New Jersey located in the City of Newark in the State of New Jersey or a state court located in Bergen County in New Jersey, and you hereby waive any jurisdictional, venue, or inconvenient forum objections to such courts.”

14. Hertz’ General Terms of Use also states: “Except as otherwise required by law ..., price, rate and availability of products or services are subject to change without notice.”⁵

15. This statement is shown in the screenshot below with the above language highlighted:

Verification of submitted data may be required prior to our acceptance of any reservation, purchase or order. Except as otherwise required by law or as otherwise expressly stated by us, price, rate and availability of products or services are subject to change without notice. You acknowledge that reservations, purchases and services are subject to additional terms and conditions imposed by us or by our affiliates, licensees or associates. A summary of our current policies regarding vehicle rental rate quotes, reservations and prepaid rentals is accessible from the web page on which you are quoted a rate for rental by us.

16. Nowhere on this page does Hertz specify whether the provision that “price, rate and availability of products or services are subject to change without notice” is or is not applicable to reservations made using the Hertz website by New Jersey citizens or whether New Jersey is (or is not) one of the places where the law requires “otherwise.”

17. Hertz’ General Terms of Use also states: “**Void Where Prohibited.** Although this website is accessible worldwide, not all products or services discussed or referenced in this website are available to all persons or in all geographic locations or jurisdictions. In addition, restrictions may apply to use of products or services obtained in one jurisdiction in other jurisdictions. Those who choose to access this website do so on their own initiative and at their own risk, and are

⁵ <https://www.hertz.com/rentacar/navigation/templates/legalView.jsp> (accessed Mar. 15, 2016).

responsible for compliance with their local laws, if and to the extent such local laws are applicable.” (emphasis in original).

18. This statement is shown in the screenshot below with the above language highlighted:

Void Where Prohibited. Although this website is accessible worldwide, not all products or services discussed or referenced in this website are available to all persons or in all geographic locations or jurisdictions. In addition, restrictions may apply to use of products or services obtained in one jurisdiction in other jurisdictions. Those who choose to access this website do so on their own initiative and at their own risk, and are responsible for compliance with their local laws, if and to the extent such local laws are applicable. You may not use or export the Site Materials or products and services available through this website in violation of applicable export laws and regulations. We, and our affiliates, licensees, suppliers and agents, reserve the right to limit the availability of this website and/or the provision of any product or service to any person, geographic area or jurisdiction we or they so desire, at any time and in our or their sole discretion.

19. Nowhere on this page does Hertz specify whether the provision that “not all products or services discussed or referenced in this website are available to all persons or in all geographic locations or jurisdictions. In addition, restrictions may apply to use of products or services obtained in one jurisdiction in other jurisdictions” is or is not applicable to reservations made using the Hertz website by New Jersey citizens or whether New Jersey is (or is not) one of the places where there are restrictions applicable to “use of products or services.”

20. Hertz’ General Terms of Use states that it was last updated on April 30, 2013.⁶

21. However, past versions of the same webpage containing provisions identical to those referenced above can be found dating back to June 1, 2011.⁷

22. Accordingly, those terms and conditions have been in place, at a minimum, for more than four years prior to the filing of this lawsuit.

Terms and Conditions of Hertz’ Gold Plus Rewards Program

23. The www.hertz.com website also contains a set of “Gold Plus Rewards Reward Terms and Conditions” on a webpage that provides notice to members of the Gold Plus Rewards

⁶ <https://www.hertz.com/rentacar/navigation/templates/legalView.jsp> (accessed March 15, 2016).

⁷ <https://web.archive.org/web/20110930190430/https://www.hertz.com/rentacar/navigation/templates/legalView.jsp>

Program of conditions to which they must agree in order to participate in the program (“Hertz’ Gold Plus Terms”).⁸

24. The webpage containing Hertz’ Gold Plus Terms states, “Gold Plus Rewards offers are void where prohibited by law.”⁹

25. The following screenshot shows the above statement as it appears on the Hertz website with the statement in question highlighted:

Gold Plus Rewards offers are void where prohibited by law. Gold Plus Rewards Points will not be refunded in the event of no shows, early vehicle returns or reservation cancellation requests, unless the rental is cancelled with at least twenty-four hours prior notice to the rental pick up time shown on the reservation. Gold Plus Rewards Points, frequent traveler miles or points and Gold Plus Rewards Rentals are not exchangeable, refundable or redeemable for cash or credit under any circumstance. Tax liabilities arising from the Program are the sole responsibility of the member.

26. Nowhere on this web page does Hertz specify whether such offers are or are not void, unenforceable or inapplicable within the State of New Jersey or whether the State of New Jersey is or is not one of the locations where such offers are prohibited by law.

27. Past versions of this page can be found dating back to June 8, 2012.¹⁰ On that date, the page stated, as it does now, that Gold Plus Rewards offers are void where prohibited by law without specifying whether the State of New Jersey is or is not one of the places where such offers are void because they are prohibited by law.

CLASS ALLEGATIONS

28. This action is brought and may properly proceed as a class action, pursuant to Fed. R. Civ. P. 23(a) and (b)(3).

29. Plaintiff seeks certification of two Classes, initially defined as follows:

⁸ <https://www.hertz.com/rentacar/emember/rewards-legal/loyalty-terms-conditions> (accessed Mar. 15, 2016).

⁹ See <https://www.hertz.com/rentacar/emember/rewards-legal/loyalty-terms-conditions> (accessed Mar. 15, 2016).

¹⁰ <https://web.archive.org/web/201206080732/http://www.hertz.com/rentacar/emember/rewards-legal/loyalty-terms-conditions> (accessed Mar. 15, 2016).

Hertz Gold Plus Rewards Program Class. All citizens of the State of New Jersey who were members of the Hertz Gold Plus Rewards Program for personal, family, or household purposes at any time either (a) between the date six years prior to the date of the filing of this Complaint and June 8, 2012, at a time when the Gold Plus Rewards Terms and Conditions contained language stating, in words or substance, that Gold Plus Rewards offers are void where prohibited by law, without specifying which provisions are or are not void, unenforceable or inapplicable within the State of New Jersey, (b) on or after June 8, 2012, or (c) both.

Hertz Renters Class. All citizens of the State of New Jersey who, at any time either (a) between the date six years prior to the date of the filing of this Complaint and June 1, 2011, at a time when Hertz' General Terms of Use webpage contained language stating, in words or substance, that except as otherwise required by law, price, rate and availability of products or services are subject to change without notice and that the Hertz' General Terms of Use are void where prohibited, without specifying whether these provisions are void, unenforceable, or inapplicable within the State of New Jersey, (b) on or after June 1, 2011, or (c) both, rented a motor vehicle from Hertz for personal, family, or household purposes after using Hertz' website to reserve that motor vehicle.

30. The members of the Classes for whose benefit this action is brought are so numerous that joinder of all members is impracticable.

31. There are questions of law and fact common to the members of the Classes. These common questions include, but are not limited to:

- a) Does Hertz' Gold Plus Rewards Reward Terms and Conditions include the following: "Gold Plus Rewards offers are void where prohibited by law"?
- b) Does Hertz specify whether the Gold Plus Rewards offers are or are not void, unenforceable or inapplicable within the State of New Jersey?
- c) Does "THE HERTZ CORPORATION WEBSITE GENERAL TERMS AND CONDITIONS OF USE" state: "Except as otherwise required by law ..., price, rate and availability of products or services are subject to change without notice?"
- d) Does Hertz specify whether the provision that price, rate and availability of products or services are subject to change without notice is or is not applicable within the State of New Jersey?
- e) Does "THE HERTZ CORPORATION WEBSITE GENERAL TERMS AND CONDITIONS OF USE" state: "**Void Where Prohibited.** Although this website is accessible worldwide, not all

products or services discussed or referenced in this website are available to all persons or in all geographic locations or jurisdictions. In addition, restrictions may apply to use of products or services obtained in one jurisdiction in other jurisdictions. Those who choose to access this website do so on their own initiative and at their own risk, and are responsible for compliance with their local laws, if and to the extent such local laws are applicable.”? (emphasis in original).

- f) Does Hertz specify whether the terms referenced in the “Void Where Prohibited” section referenced above are or are not void, unenforceable, or inapplicable within the State of New Jersey?
- g) Whether Plaintiff and those similarly situated are entitled to statutory damages of not less than \$100 for each violation of TCCWNA.

32. Plaintiff asserts claims that are typical of the claims of the members of the Classes he seeks to represent, because all such claims arise out of the same, or similar, notices or contracts used by Defendant in its transactions with Plaintiffs.

33. Plaintiff will fairly and adequately protect the interests of the Classes.

34. Plaintiff does not have any interests which are incompatible or contrary to those of the Classes.

35. The questions of law or fact common to the Class members, as detailed above, predominate over any questions affecting only individual members.

36. A class action is superior to other available methods for the fair and efficient adjudication of the claims of Plaintiffs and the putative Classes.

37. Specifically, the Classes are too numerous for individual actions and the economic damages, statutorily required for Plaintiff and the putative Class members, are too small to warrant individual actions when compared to the expense and burden of individual litigation.

38. A class action for these claims will provide an orderly and expeditious process for the Class members, and will serve to conserve judicial resources as well as time and expenses for the Class members.

39. The members of the Classes are readily identifiable from the records of Defendant.

40. Plaintiff has retained competent counsel who is experienced in the prosecution of consumer class action litigation. The proposed Class Counsel will fairly and adequately represent the interests of the Class. Proposed Class Counsel has identified and investigated the potential claims in this action. Proposed Class Counsel has extensive experience in handling class actions, other complex litigation, and consumer claims of the type asserted in the instant action. Proposed Class Counsel has knowledge of the applicable law for this action and will commit the necessary resources to representing this Class.

COUNT I
(Terms and Conditions of Hertz' Gold Plus Rewards Program)

41. Plaintiff, on behalf of himself and the Hertz Gold Plus Rewards Program Class re-asserts and incorporates by reference each and every allegation set forth in the preceding paragraphs as though stated in full herein.

42. Plaintiff and the members of the Hertz Gold Plus Rewards Program Class are “consumers” within the meaning of TCCWNA.

43. Hertz’ web page entitled “Gold Plus Rewards Reward Terms and Conditions” is a consumer contract, notice, or sign within the meaning of TCCWNA, as set forth at N.J.S.A. 56:12-15 and -16.

44. TCCWNA states, in relevant part:

No consumer contract, notice or sign shall state that any of its provisions is or may be void, unenforceable or inapplicable in some jurisdictions without specifying which provisions are or are not void, unenforceable or inapplicable within the State of New Jersey[.]

N.J.S.A. 56:12-16.

45. Hertz’ web page entitled “Gold Plus Rewards Reward Terms and Conditions,” which states “Gold Plus Rewards offers are void where prohibited by law,” violates TCCWNA at

N.J.S.A. 56:12-16 in that it fails to specify which offers are or are not void, unenforceable or inapplicable within the State of New Jersey or whether the State of New Jersey is or is not one of the locations where such offers are prohibited by law.

46. Pursuant to N.J.S.A. 56:12-17, and as a result of Defendant's violations of TCCWNA, Plaintiff, and all Class members similarly situated, are statutorily entitled to damages of not less than \$100 for each such violation, together with reasonable attorney's fees and court costs.

COUNT II
(Terms and Conditions for Use of Hertz' Website)

47. Plaintiff, on behalf of himself and the Hertz Renters Class, re-asserts and incorporates by reference each and every allegation set forth in the preceding paragraphs as though stated at length herein.

48. Plaintiff and the members of the Hertz Renters Class are "consumers" within the meaning of TCCWNA.

49. Hertz' web page entitled, "THE HERTZ CORPORATION WEBSITE GENERAL TERMS AND CONDITIONS OF USE" is a consumer contract, notice, or sign within the meaning of TCCWNA.

50. TCCWNA states, in relevant part:

No consumer contract, notice or sign shall state that any of its provisions is or may be void, unenforceable or inapplicable in some jurisdictions without specifying which provisions are or are not void, unenforceable or inapplicable within the State of New Jersey[.]

N.J.S.A. 56:12-16.

51. Hertz' web page entitled "THE HERTZ CORPORATION WEBSITE GENERAL TERMS AND CONDITIONS OF USE" provides notice to consumers of a set of terms and conditions that govern the use of its website and become part of an "Agreement" between Hertz

and consumers who access the website, including consumers who use the website to make reservations for motor vehicle rentals.

52. This web page, which states, “Except as otherwise required by law ..., price, rate and availability of products or services are subject to change without notice,” violates TCCWNA at N.J.S.A. 56:12-16 in that it fails to specify whether the provision that “price, rate and availability of products or services are subject to change without notice” is or is not void, unenforceable, or inapplicable to reservations made by New Jersey citizens and fails to specify whether the State of New Jersey is or is not one of the places where the law requires otherwise.

53. Hertz’ web page entitled, “THE HERTZ CORPORATION WEBSITE GENERAL TERMS AND CONDITIONS OF USE” also states: “**Void Where Prohibited.** Although this website is accessible worldwide, not all products or services discussed or referenced in this website are available to all persons or in all geographic locations or jurisdictions. In addition, restrictions may apply to use of products or services obtained in one jurisdiction in other jurisdictions. Those who choose to access this website do so on their own initiative and at their own risk, and are responsible for compliance with their local laws, if and to the extent such local laws are applicable.” (emphasis in original).

54. The language referenced in the foregoing paragraph violates TCCWNA at N.J.S.A. 56:12-16 in that it states the terms are or may be void, unenforceable or inapplicable in some jurisdictions without specifying which provisions are or are not void, unenforceable or inapplicable within the State of New Jersey.

55. Pursuant to N.J.S.A. 56:12-17, and as a result of Defendant's violations of TCCWNA, Plaintiff, and all Class members similarly situated, are statutorily entitled to damages

of not less than \$100 for each such violation, together with reasonable attorney's fees and court costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, demands judgment against Defendant as follows:

- a. Certifying this matter as a class action pursuant to Fed. R. Civ. P. 23(a) and (b)(3);
- b. Appointing Plaintiff as Class Representative;
- c. Appointing Plaintiffs' attorneys, the Proposed Class Counsel, as Class Counsel;
- d. Awarding Plaintiffs and the Class members the statutory civil penalties under TCCWNA, pursuant to N.J.S.A. 56:12-17;
- e. Awarding reasonable attorneys' fees and costs pursuant to N.J.S.A. 56:12-17;
- f. Such other relief as the Court deems equitable and just.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Respectfully submitted,

COHN LIFLAND PEARLMAN
HERRMANN & KNOPF LLP

Dated: March 16, 2016

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